



STATE OF NEW YORK
DEPARTMENT OF STATE
41 STATE STREET
ALBANY, NY 12231-0001

GEORGE E. PATAKI
GOVERNOR

RANDY A. DANIELS
SECRETARY OF STATE

April 3, 2002

Mr. David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Lt. Colonel Glen R. DeWillie
U.S. Army Corps of Engineers, Buffalo District
1776 Niagara Street
Buffalo, NY 14207

Re: Millennium Pipeline Company, L.P.
FERC Docket No.: CP98-150-000; CP98-151-000
COE/Buffalo: 97-320-0003 (2)
COE/NY: 1999-00640

Dear Mr. Boergers and Lt. Colonel DeWillie:

Following recent communication with the U.S. Army Corps of Engineers regarding the above referenced project, the New York State Department of State (DOS) wishes to inform you that it is presently reviewing the information submitted by Millennium regarding blasting in Haverstraw Bay and may, if necessary, request Millennium to provide a blasting plan, prior to issuing the federal consistency determination under the Coastal Zone Management Act.

The time period for completing consistency review has been extended by mutual agreement of the applicant and the Department. Specifically, on September 11, 2001, Millennium and DOS exchanged letters agreeing to extend the time for DOS to render its consistency determination.

The new NOAA coastal consistency regulations, which became effective January 8, 2001, provide for such extensions:

15 CFR § 930.60 Commencement of State agency review.

((3) State agencies and applicants (and persons under subpart E of this part) may mutually agree to stay the consistency timeclock or extend the six-month review period. Such an agreement shall be in writing and shall be provided to the Federal agency. A Federal agency shall not presume State agency concurrence with an activity where such an agreement exists or where a State agency's review period, under paragraph (a)(1)(I) of this section, has not begun. (Emphasis added.)

Mr. David P. Bourgers
Lt. Colonel Glen R. DeWille
Page 2

Based on the extension agreement, no federal agency, including the Corps of Engineers and FERC, can issue a final decision without a prior consistency determination and may not presume concurrence where the consistency time clock has been extended.

The extension agreement between DOS and Millennium was predicated on receipt of the Final Environmental Impact Statement on the proposed project, barring any "other project changes which may have effects upon the coastal zone of New York State." Shortly after the FEIS was delivered, Millennium, on October 11, 2001, proposed project changes involving underwater "blasting" in the eastern-most 400 feet of Haverstraw Bay.

The US Army Corps of Engineers advised Millennium that since this was new project information, which was not addressed in the Final Environmental Impact Statement, a complete description of the proposed blasting plan and other details, including a justification for the blasting, were necessary. In a letter dated December 14, 2001, DOS advised Millennium's attorneys that because of the receipt of new information regarding "blasting" in Haverstraw Bay the consistency review would not be completed with 30 to 60 days after receipt of the FEIS, because the blasting constituted a "project change which may have effects upon the coastal zone of New York State." We noted that blasting is a project change which will likely have a significant adverse effect on the sensitive aquatic environment and significant coastal fish and wildlife habitat in Haverstraw Bay. In furtherance of the Army Corps request to furnish specific items about the proposed blasting, DOS requested Millennium to provide the same information to this agency.

In its Interim Order, dated December 19, 2001, FERC authorized Millennium's proposal, subject to conditions. Among these conditions was that "Millennium cannot be constructed until it receives a consistency determination from NYS DOS." (Interim Order, page 58) FERC acknowledged in its Interim Order that the blasting is "new information" requiring a modification of the work planned for the Haverstraw Bay crossing and consultation with this agency and other state and federal agencies. Due to Millennium's late notification to the Army Corps and this agency of its intention to conduct blasting in Haverstraw Bay, FERC required Millennium to certify whether blasting in the significant habitat is consistent with the NYS CMP. FERC stated that "[T]he potential blasting will also affect the ongoing permitting process for the COE ... and the New York State Department of State."

Millennium's attorneys, in a letter dated February 6, 2002, provided DOS with copies of correspondence to the New York Department of Environmental Conservation, which generally described Millennium's underwater blasting plans and promised that Millennium "will submit a blasting plan to the Department [of Environmental Conservation] for its review and approval" at the time the 401 Water Quality Certification is amended. Among other things, the blasting plan "will define spacing, hole diameter, hole patterns, charge size and stemming procedures to mitigate the pressure wave generated by the blasting." It will also identify potential mitigation measures to protect fish and wildlife in the DOS designated and regulated Haverstraw Bay habitat.

Attached to the correspondence was a copy of a 150 page Army Corps's report entitled "The Environmental Effects of Underwater Explosions with Methods to Mitigate Impacts" (Keevin, Hampen, August 1997). That report described numerous adverse impacts to fish with swim bladders and other aquatic life, together with some potentially mitigating measures. While it analyzed the generic impacts from underwater blasting, the report did not focus on the biologically diverse Haverstraw Bay or the threatened or endangered species using or dependant upon the habitat. Moreover, the report begins with 20 pages of studies referenced which deal with the effects of explosives on various species of fish.

On February 19, 2001 DOS and Millennium representatives met to discuss the proposed blasting in Haverstraw Bay. Thereafter, by letter dated February 22, 2002, Millennium's attorney's expressed their opinion that: "...DOS now has all of the information that it needs regarding the Millennium project to make its decision re the consistency of the Millennium Project with the CMP."

Mr. David P. Boergers
Lt. Colonel Glen R. DeWille
Page 3

DOS responded with its own letter, dated March 1, 2002, indicating that the agency "is currently analyzing the documents you submitted, including the [1997] U.S. Army Corps underwater blasting report. We expect that within several weeks we will know whether the information submitted is adequate for consistency review purposes or whether we too will need to review the site-specific blasting plan you are preparing for other agencies."

In the meanwhile, on March 8, 2002, DOS received copies of correspondence to FERC from the National Marine Fisheries Service, which indicated that NMFS has reinitiated project review due the potential effect of blasting in Haverstraw Bay on federally endangered species and essential fish habitats and requested further coordination with FERC to analyze potential effects.

Millennium's attorneys sent another letter to DOS dated March 14, 2002 in which it admitted:

"Millennium, nevertheless, recognizes that the possible need for a limited amount of blasting in the Hudson River was not addressed until recently in Millennium's submissions to DOS, regrets that oversight, and renews its commitment to provide DOS with full and complete information on all aspects of the Millennium Project that are subject to review by DOS."

For the foregoing reasons, DOS believes it necessary to carefully review all information and data submitted to date.

If you have any questions, please feel free to contact me.

Sincerely,


George R. Stafford
Director

cc: COE/NY: Richard Tomer
COE/Buffalo: Paul Leubner
COE/Buffalo: Heidi Firstencel, Project Manager
Tom West, Esq.
OCRM Acting Director Bud Ehler